

FILED

MAR 14 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FERNANDO ARISTOBULO ACERO,

Petitioner - Appellant,

v.

UNITED STATES OF AMERICA,

Respondent - Appellee.

No. 05-35498

D.C. No. CV-04-01910-RSL

MEMORANDUM *

Appeal from the United States District Court
for the Western District of Washington
Robert S. Lasnik, District Judge, Presiding

Submitted March 8, 2006**

Before: CANBY, BEEZER and KOZINSKI, Circuit Judges.

Federal prisoner Fernando Aristobulo Acero appeals pro se the district court's denial of his 28 U.S.C. § 2255 motion to vacate, set aside or correct his sentence following his guilty plea for possession with intent to distribute over 50

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

kilograms of marijuana and 500 grams or more of a mixture and substance containing cocaine. We have jurisdiction under 28 U.S.C § 2253, and we affirm.

Acero's contention that he is entitled to be resentenced under *United States v. Booker*, 125 S. Ct. 738 (2005), is foreclosed because such relief is not available retroactively on collateral review. *See United States v. Cruz*, 423 F.3d 1119, 1121 (9th Cir. 2005) (holding that *Booker* does not apply retroactively in § 2255 proceedings where the conviction was final as of the date of *Booker*'s publication).

To the extent that appellant raises uncertified issues in his appeal, we construe it as a motion to broaden the certificate of appealability, and deny the motion. *See* 9th Cir. R. 22-1(e).

AFFIRMED.